
Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Twenty-One Sound Communications, Inc.)	File No. EB-03-KC-082
)	
Licensee of Radio Station KKAC in)	NAL/Acct. No. 200332560030
Vandalia, Missouri)	
Florissant, Missouri)	FRN: 0006-1497-93

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: October 6, 2003

By the, Enforcement Bureau, Kansas City Office:

I. INTRODUCTION

In this Notice of Apparent Liability for Forfeiture ("NAL"), we find Twenty-One Sound Communications, Inc., ("Twenty-One"), licensee of FM radio station KKAC, Vandalia, Missouri, apparently liable for a forfeiture in the amount of seven thousand dollars (\$7,000) for willful and repeated violation of Section 73.1125(a) of the Rules.¹ Specifically, we find Twenty-One Sound Communications, Inc. apparently liable for failure to maintain a main studio presence.

II. BACKGROUND

1. On April 22, 2003, an agent from the FCC Enforcement Bureau's Kansas City Office ("Kansas City Office") attempted an inspection of KKAC during regular business hours. The studio building was locked with no indication of any persons present, and had no posted business hours or telephone numbers to contact station personnel. The local telephone directory contained no listing for the station. From Commission antenna structure records, the agent obtained a contact telephone number for the owner of the station's antenna structure. The agent called this number and spoke with Twenty-One's President, Randy Wachter, in St. Louis, Missouri. The agent arranged with Mr. Wachter to conduct an inspection on the following day at the KKAC transmitter and studio in Vandalia, Missouri.

2. On April 23, 2003, the agent conducted an inspection of KKAC's studio and transmitter. The KKAC studio was closed to the public and no station employees were present except Mr. Wachter who met the agent at the studio. The station operated unattended and employed no staff at the studio or transmitter site.

3. On July 22, 2003, the agent went to the KKAC studio in Vandalia, Missouri during regular business hours. The agent found the studio building locked and no persons present. A sign displayed a telephone number as a contact number for the station. That telephone number connected to a mobile telephone number in St. Louis, Missouri.

¹ 47 C.F.R. § 73.1125(a).

III. DISCUSSION

4. Section 73.1125(a) of the Rules states that each AM, FM, or TV broadcast station shall maintain a studio at one of the following locations: (1) within the station's community of license; (2) at any location within the principal community contour of any AM, FM, or TV broadcast station licensed to the station's community of license; or (3) within twenty-five miles from the reference coordinates of the center of its community of license as described in §73.208(a)(1). In adopting the main studio rules, the Commission stated that the station's main studio must have the capability to serve the needs and interests of the residents of the station's community of license.² To fulfill this function, a station must, among other things, maintain a meaningful presence at its main studio.³ The Commission has defined a minimally acceptable "meaningful presence" as full-time managerial and full-time staff personnel.⁴ The licensee need not have the same staff person and manager at the studio, as long as there was management and staff presence there during normal business hours.⁵ Although management personnel need not be "chained to their desks" during normal business hours, they must "report at the main studio on a daily basis, spend a substantial amount of time there and ... use the studio as a home base."⁶ On April 22, April 23, and July 22, 2003, KKAC's main studio in Vandalia, Missouri maintained no staff or management presence during normal business hours. On each day, the main studio was locked and unoccupied.

9. Based on the evidence before us, we find that Twenty-One willfully⁷ and repeatedly⁸ violated Section 73.1125(a) of the Rules by failing to maintain a presence at its main studio.

10. Pursuant to Section 1.80(b)(4) of the Rules,⁹ the base forfeiture amount for violation of the main studio rules is \$7,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended ("Act"), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require."¹⁰ Considering the entire record and applying the factors listed above, this case warrants a \$7,000 forfeiture.

² *Main Studio and Program Origination Rules*, 2 FCC Rcd 3215, 3217-18 (1987), *clarified*, 3 FCC Rcd 5024, 5026 (1988).

³ *Id.*

⁴ *Jones Eastern of the Outer Banks, Inc.*, 6 FCC Rcd 3615, 3616 (1991), *clarified*, 7 FCC Rcd 6800 (1992).

⁵ *Id.*, 6 FCC Rcd at 3616 n.2; 7 FCC Rcd at 6800 n.4.

⁶ *Id.*, 7 FCC Rcd at 6802.

⁷ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁸ Section 312(f)(2), which also applies to Section 503(b), provides: [t]he term "repeated", when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.

⁹ 47 C.F.R. § 1.80(b)(4).

¹⁰ 47 U.S.C. § 503 (b)(2)(D).

IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act¹¹ and Sections 0.111, 0.311 and 1.80 of the Rules,¹² Twenty-One Sound Communications, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of seven thousand dollars (\$7,000) for willful and repeated violation of Section 73.1125(a) of the Rules for failure to maintain a presence at the KKAC main studio.

12. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty (30) days of the release date of this NAL, Twenty-One Sound Communications, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

13. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN referenced above. Request for payment of the full amount of NAL under an installment plan should be sent to: Chief, Revenue and Receivable Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹³

14. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street, SW, Washington, DC 20554, Attn: Enforcement Bureau-Spectrum Enforcement Division, and MUST INCLUDE THE NAL/Acct. No. referenced above.

15. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

16. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Spectrum Enforcement Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

¹¹ 47 U.S.C. § 503(b).

¹² 47 C.F.R. §§ 0.111, 0.311 and 1.80.

¹³ See 47 C.F.R. § 1.1914.

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17. IT IS FURTHER ORDERED THAT a copy of this NAL shall be sent by regular mail and Certified Mail Return Receipt Requested to Twenty-One Sound Communications, Inc., 3418 Douglas Road, Florissant, MO. 63034.

FEDERAL COMMUNICATIONS COMMISSION

Robert C. McKinney
District Director, Kansas City Office
Enforcement Bureau

Attachment A